

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
MARK A. WILLIAMS (Cal. Bar No. 239351)
4 Chief, Environmental Crimes and Consumer Protection Section
Assistant United States Attorney
5 MATTHEW O'BRIEN (Cal. Bar No. 261568)
Assistant United States Attorney
6 Environmental Crimes and Consumer Protection Section
ALIX MCKENNA (Cal. Bar. No. 295202)
7 Assistant United States Attorney
General Crimes Section
8 1300 United States Courthouse
312 North Spring Street
9 Los Angeles, California 90012
Telephone: (213) 894-8644
10 Facsimile: (213) 894-0141
E-mail: Matthew.O'Brien@usdoj.gov
11

Attorneys for Plaintiff
12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 MICHAEL BARZMAN,

19 Defendant.

No. CR 23-CR-169-MEMF

GOVERNMENT'S RESPONSE TO VICTIM
STATEMENTS FROM BASQUIAT VENICE
INVESTMENT GROUP AND RICHARD
LIPUMA

Sentencing Date: August 18, 2023
Sentencing Time: 11:00 a.m.
Location: Courtroom of the
Hon. Maame Ewusi-
Mensah Frimpong

22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California and Assistant United States Attorneys Mark Williams,
25 Matthew O'Brien, and Alix McKenna, hereby submits its response to the
26 Court's orders on August 14 and 15, 2023 (Dkt. Nos. 34 & 36)

27 //

28 //

1 requiring a response to the victim statements filed by Basquiat
2 Venice Investment Group and Richard LiPuma.

3 Dated: August 16, 2023

Respectfully submitted,

4 E. MARTIN ESTRADA
United States Attorney

5 MACK E. JENKINS
6 Assistant United States Attorney
7 Chief, Criminal Division

8 /s/

MARK WILLIAMS

9 MATTHEW O'BRIEN

ALIX MCKENNA

10 Assistant United States Attorneys

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Court's orders (Dkt. Nos. 34 & 36), the government responds herein to the "Victim Impact Statement" filed on August 14, 2023 by third party Basquiat Venice Investment Group ("BVG") (Dkt. No. 33), and the victim letter submitted on August 15, 2023 by third party Richard LiPuma (Dkt. No. 35). Neither BVG nor Mr. LiPuma is a victim of the charged offense committed by defendant MICHAEL BARZMAN ("defendant"). Accordingly, BVG and Mr. LiPuma have no right to be heard at defendant's sentencing. Nor do BVG or Mr. LiPuma have any right to an evidentiary hearing prior to defendant's sentencing. The Court should disregard their victim statements and proceed with defendant's sentencing on August 18, 2023.

II. ARGUMENT

A. BVG and Mr. LiPuma Are Not Victims in This Criminal Case

The government has not provided any victim notifications in this case because the government is not aware of any victims of the charged offense (other than the FBI). Neither BVG nor Mr. LiPuma is a victim of the charged offense. Accordingly, the government was not required to provide BVG or Mr. LiPuma with any of the notifications or accommodations set forth in the Crime Victims' Rights Act ("CVRA") or any related statute.

The CVRA defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense." 18 U.S.C. § 3771(e).¹ Defendant pled guilty to a single

¹ Despite BVG's absurd claim to the contrary (Victim Impact Statement at 4:20), paintings are not "persons" and cannot be victims.

1 count of violating 18 U.S.C. § 1001 for lying to the FBI during
2 interviews between August and October 2022, when he claimed, falsely,
3 that he did not create the Fraudulent Paintings. The charged offense
4 - lying to the FBI in late 2022 about the fact that he created the
5 Fraudulent Paintings in 2012 - did not directly and proximately cause
6 any harm to BVIG or Mr. LiPuma.

7 The only victim here is the FBI. Defendant's false statements
8 to the FBI directly and proximately harmed the FBI by sidetracking
9 and prolonging the agents' investigation into defendant's role in the
10 Fraudulent Paintings. Other than the FBI, defendant's false
11 statements to the FBI directly and proximately harmed nobody.

12 Both BVIG and Mr. LiPuma ignore that they could only qualify as
13 victims under the CVRA if defendant's false statements to the FBI
14 between August and October 2022 directly and proximately harmed them.
15 The submissions of BVIG and Mr. LiPuma are chock full of alleged
16 harms purportedly caused by defendant prior to the charged offense.
17 Under the CVRA, those prior alleged harms allegedly caused by
18 defendant prior to the charged offense do not transform BVIG or Mr.
19 LiPuma into victims in this case. While BVIG and Mr. LiPuma may have
20 other legal remedies available for defendant's prior alleged
21 misconduct, they do not count as victims in this criminal proceeding.

22 1. BVIG

23 BVIG acquired the Fraudulent Paintings many years prior to the
24 conduct charged here. The dramatic drop in the value of the
25 Fraudulent Paintings in 2022 was not directly and proximately caused
26 by defendant telling the FBI in the fall of 2022 that he did not
27 create the Fraudulent Paintings.

1 Aside from being replete with false statements, the fundamental
2 flaw in BVIG's 56-page "Victim Impact Statement" is that even if
3 BVIG's claims were true (which the government denies), BVIG still
4 would not qualify as a victim of the charged offense. Even if the
5 Fraudulent Paintings were authentic works by Jean-Michel Basquiat
6 (which the government denies), defendant's statements to the FBI in
7 2022 that he did not create the Fraudulent Paintings still would not
8 have directly and proximately harmed BVIG. If BVIG's story were
9 true, then defendant was telling the truth during the interviews with
10 the FBI from August through October 2022 when he said he did not
11 create the works, and BVIG could not possibly have been harmed by
12 those purportedly true statements.

13 In contending otherwise, BVIG asks to Court to look beyond the
14 elements of the charged offense. To do so, however, would be
15 contrary to the plain language of the CVRA, and would require federal
16 courts to engage in extensive factfinding at various stages of a
17 criminal proceeding to determine the full scope of a particular
18 defendant's criminal conduct (so that potential victims' alleged CVRA
19 rights could be enforced). Congress did not intend such a result.

20 Indeed, the facts of this case make plain the pitfalls of
21 looking beyond the elements of a particular offense in determining
22 who qualifies as a "crime victim" under the CVRA. The Fraudulent
23 Paintings have been the subject of numerous overlapping schemes over
24 the past decade. The government's investigation into those schemes
25 is ongoing. As explained below, an evidentiary hearing into the
26 decade's worth of frauds surrounding the Fraudulent Paintings would
27 turn the government's narrowly tailored, straightforward criminal
28 case against defendant into a quasi-civil quagmire.

1 2. Mr. LiPuma

2 Mr. LiPuma's letter to the Court similarly describes alleged
3 harms caused by defendant to Mr. LiPuma prior to the charged offense
4 in this case. Mr. LiPuma complains about numerous false statements
5 allegedly made to him by defendant over the past decade, and the
6 resulting financial hardships he incurred relating to the exhibition
7 of the Fraudulent Paintings in early 2022. Even if everything that
8 Mr. LiPuma claims is true, it would not make him a victim of the
9 false statements that defendant provided to the FBI from August
10 through October 2022.

11 **B. Defendant's Sentencing Should Proceed As Scheduled on**
12 **August 18, 2023 Because There Is No Basis for an**
13 **Evidentiary Hearing**

14 1. BVIG

15 BVIG's request for a continuance of defendant's sentencing so
16 that an evidentiary hearing can take place lacks legal support and
17 defies common sense. BVIG asks the Court to delay defendant's
18 straightforward sentencing so that the Court can preside over a fact-
19 finding inquiry covering events spanning a decade and dozens of
20 witnesses.² An evidentiary hearing would be a mini-trial, despite

21 ² Several of the key stakeholders of the "victims" are
22 criminals. For example, Pierce O'Donnell (who authored the "Victim
23 Impact Statement") has federal and state convictions for violating
24 campaign-finance laws (for which he was sentenced to 60 days in
25 prison). (See, e.g., United States v. O'Donnell, C.D. Cal. Case No.
26 2:08-CR-872-SJO.) O'Donnell was suspended from the California State
27 Bar for his misconduct. Lee Mangan (see "Victim Impact Statement,"
28 Exh. 12) has convictions for cocaine trafficking and securities
fraud. Their associate William Force (see id. at 31-32) also was
convicted and imprisoned for felony drug trafficking. Aaron DeGroft,
the former director of the Orlando Museum of Art (see id., Exh. 11),
was sued on August 14, 2023 (along with O'Donnell, Mangan, Force,
LiPuma, BVCG, and others) by the museum for fraud and conspiracy as a
result of the Basquiat exhibition. (See
<https://www.nytimes.com/2023/08/15/arts/design/fake-basquiats-orlando-lawsuit.html>.)

1 the fact that there is no pending dispute between the government and
2 defendant. An evidentiary hearing would turn what should be a
3 straightforward process on its head and interfere with the
4 government's ongoing criminal investigation. There is no authority
5 for a non-victim third party to derail a sentencing in such a manner.

6 While BVIG frames its request as restitutionary (Victim Impact
7 Statement at 51:26-27), BVIG is not seeking restitution. BVIG does
8 not claim that defendant ripped off BVIG by selling fraudulent
9 artworks to BVIG. To the contrary, BVIG claims it purchased genuine
10 Basquiat paintings from defendant. (Id.) Hence even if BVIG's
11 claims were accurate (which the government denies), BVIG would not be
12 entitled to any restitution from defendant.

13 Instead, BVIG requests an evidentiary hearing through which to
14 litigate the authenticity of the Fraudulent Paintings. (Id. at 52:2-
15 12.) There is no legal authority providing for such a hearing here,
16 and the lengthy "Victim Impact Statement" cites none.

17 Defendant has pled guilty to a narrow offense and seeks to be
18 sentenced for his crime. Other than a minor disagreement about the
19 length of defendant's probation and the amount of community service
20 he should perform, defendant and the government (and the United
21 States Probation Office) are in complete agreement on the resolution
22 of this case. His sentencing should go forward as scheduled.

23 2. Mr. LiPuma

24 The same holds true for Mr. LiPuma. Unlike BVIG, Mr. LiPuma
25 does not appear to be requesting an evidentiary hearing and is
26 seeking actual restitution. Nonetheless, his request for a
27 continuance so that he may prepare a more formal request for the
28

1 Court is improper because he is not a victim of defendant's charged
2 offense.

3 **III. CONCLUSION**

4 Whatever harms defendant allegedly caused BVIG and/or Mr.
5 LiPuma, neither BVIG nor Mr. LiPuma has any right to sidetrack this
6 criminal proceeding because neither is a victim of the charged
7 offense. Defendant should be sentenced on Friday morning.

8
9 Dated: August 16, 2023

Respectfully submitted,

10 E. MARTIN ESTRADA
11 United States Attorney

12 MACK E. JENKINS
13 Assistant United States Attorney
Chief, Criminal Division

14 /s/
15 _____
16 MARK WILLIAMS
MATTHEW O'BRIEN
ALIX MCKENNA
Assistant United States Attorneys

17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA
19
20
21
22
23
24
25
26
27
28